

RENDERED: JUNE 24, 2005; 10:00 a.m.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court of Appeals

NO. 2004-CA-000368-MR

DONNELL ANTOINE JACKSON

APPELLANT

v. APPEAL FROM MCCRACKEN CIRCUIT COURT
HONORABLE R. JEFFREY HINES, JUDGE
ACTION NO. 02-CR-00021

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * *

BEFORE: GUIDUGLI AND TAYLOR, JUDGES; EMBERTON, SENIOR JUDGE.¹

TAYLOR, JUDGE: Donnell Antoine Jackson brings this pro se appeal from a January 21, 2004, Order of the McCracken Circuit Court summarily denying his Ky. R. Crim. P. (RCr) 11.42 motion to vacate sentence. We affirm.

Appellant was indicted upon the offenses of first-degree robbery and with being a persistent felony offender (PFO)

¹ Senior Judge Thomas D. Emberton sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised Statutes 21.580.

in the second degree. It was alleged that appellant aided and assisted Corey Brooks in the commission of a robbery at a BP Station. Appellant drove Brooks to the BP, and Brooks thereafter committed the robbery. Brooks absconded with approximately \$191.00. Pursuant to a plea agreement, appellant pled guilty to robbery in the second degree and the PFO charge was dismissed. He was eventually sentenced to a term of ten years' imprisonment.

Thereafter, appellant filed a pro se RCr 11.42 motion to vacate sentence based upon ineffective assistance of trial counsel. By order entered January 21, 2004, the circuit court denied appellant's RCr 11.42 motion without an evidentiary hearing. This appeal follows.

Appellant contends the circuit court committed error by summarily denying his RCr 11.42 motion. Specifically, appellant claims that trial counsel was ineffective for failing to investigate his case and for failing to interview witnesses. To prevail upon an ineffective assistance of counsel claim, appellant must demonstrate that counsel's performance was deficient and that there exist a reasonable probability that but for counsel's errors, appellant would have not pled guilty and would have insisted upon going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S. Ct. 366, 88 L. Ed. 2d 203 (1985); Sparks v. Commonwealth, 721 S.W.2d 726 (Ky.App. 1986).

In particular, appellant argues that trial counsel was ineffective because he would not discuss any possible defenses with him, would not submit any motion upon his behalf, and would not interview potential witnesses. Essentially, appellant is arguing that trial counsel was ineffective for failing to investigate and to prepare a defense. However, appellant never specifically identified who the potential witnesses were and to what they would testify. Appellant never states that he would have insisted upon going to trial instead of pleading guilty. In fact, the record indicates that appellant faced a possible life sentence if convicted of the indicted offenses.

Based upon the above, we are of the opinion that appellant's allegations of ineffective assistance of trial counsel are plainly without merit. Simply put, we view appellant's RCr 11.42 motion as being facially meritless. Accordingly, we hold that appellant failed to demonstrate trial counsel's performance was deficient, and the circuit court properly denied his RCr 11.42 motion without an evidentiary hearing. See Fraser v. Commonwealth, 59 S.W.3d 448 (Ky. 2001).

For the foregoing reasons, the Order of the McCracken Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE:

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